IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4465 OF 2005

Tanaji Laxman Nikalji ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.Kalidas Ingale for the Applicant
Ms M.M.Deshmukh, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 12,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. The Applicant is the accused No.1 in an offence punishable under Sections 20(b) and 22 of the Narcotic Drugs and Psychotropic Substance Act,1985 (hereinafter referred to as the said Act of 1985) and Section 7 of the Essential Commodities Act, 1955. The allegation of the prosecution is that on 26th October 2004 at about 19.25 p.m. the Police of Walchand Nagar Police Station, Indapur, Pune who were on patrolling duty stopped a Maruti car and took the search of the Maruti car. It was found that nine gunny bags containing Ganja weighing 84 kgs. were in the car. The allegation of the prosecution is that the Applicant was driving the Maruti Car at the relevant time and two other accused persons were accompanying him. Under the said Panchnama Ganja was seized. Application made by the applicant for bail before the learned Special Judge, Pune has been rejected.

2. The learned Advocate for the Applicant submitted that the Assistant Police Inspector Shri Mansawale who was a member of the team accosting the the complainant took part in the search and the seizure of the contraband and he thereafter undertook further investigation. He submitted that Shri Chandrakant Jawale, Police Officer at whose instance the F.I.R. was registered has taken undue interest in the investigation of the case. This is against the basic tenets of the criminal jurisprudence and therefore the Applicant is entitled to be enlarged on bail. He submitted that there is non compliance of Section 50 of the said Act of 1985. He submitted that the Applicant has a large family consisting of two wives and two children and old parents. He submitted that the daughter of the Applicant is mentally retarded who needs regular check up and treatment. He placed reliance on the decisions of this Court to which reference will be made at later stage.

3. The learned A.P.P. submitted that the application will be governed by the stringent conditions imposed by Section 37 of the said Act of 1985. He submitted that the Applicant was driving the Maruti car in which huge contraband was found. He submitted that there is no violation of the provisions of the said Act of 1985. He invited my attention to the material on record.

4. I have considered the submissions. The weight of Ganja

allegedly found in the car driven by the Applicant is 84 kgs. Thus, the contraband was of commercial quantity. The offence is registered under Sections 20(b) and Section 22 of the said Act of 1985.

5. There is prima facie material on record to show that the Applicant had purchased the car in question. The Panchnama records that the Sub Divisional Police Officer was present. The record shows that he introduced himself to the accused persons and disclosed that he was a Gazetted Officer. At this stage it is difficult to come to the conclusion that there is violation of Section 50 of the said Act of 1985. An option was given to the the accused persons to take search of the Police Officers, police personnel, Panch witnesses and they declined to do so. The report of the Chemical Analyser shows that in the parcels recovered in the car Ganja was found which falls under Section 2 (iii) (b) of the said Act of 1985.

6. The case for bail will have to be considered in the perspective of Section 37 of the said Act 1985. There is prima facie material on record to show complicity of the Applicant. The Applicant has placed reliance on the Judgment of this court reported in 2002 All M.R.(Cri) page 701 (Ravi s/o Darshanlal Gupta Vs. State of Maharashtra). It must be borne in mind that the said Judgment is delivered in an Appeal against order of conviction under the said Act of 1985. The

Advocate for the Applicant has also invited my attention to the decision reported in 2004 All M.R. (Cri.) page 635 (Govindaprasad Amritlal Burman vs. State of Maharashtra). That was a case whether the learned Single Judge of this Court granted bail in case where Section 37 of the said Act was not applicable as admittedly the quantity of contraband found was less than commercial quantity. Same is the case with decision of this Court reported in 2003 Bombay Cases Reporter Cri. page 910 (Raju @ Mohd.Hussain Ahmad Ali Vs. State of Maharashtra).

7. At this stage, even after perusal of charge sheet it is difficult to come to the conclusion that the investigation has been carried out by Shri Chandrakant Jawale the Officer who has filed the F.I.R. Therefore, at this stage it cannot be said that the law laid down by the Apex Court in a decision reported in A.I.R. 1995 S.C. page 2339 is applicable.

8. Perusal of the order passed by the Special Court shows that the view taken by the learned Special Judge is correct. Since stringent conditions imposed by Section 37 of the said Act of 1985 are applicable, bail cannot be granted on the ground that the Applicant has a mentally sick daughter.

9. Hence, no case is made out for grant of bail. Application is rejected. The learned Special Judge will endeavour to give

priority to the case of the Applicant.

JUDGE